

LA203-009425445-0003 218A-50242-2B VAB/nh

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ECF CASE

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FREDERICK R. LEBRON and
GISELLE LEBRON,

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08-CV-4871 (DAB)

Plaintiff(s),

ANSWER AND AFFIRMATIVE
DEFENSES

-against-

JOSEPH A. PURCELL,

Trial by Jury Demanded

Defendant(s).

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Defendant(s) JOSEPH A. PURCELL by his attorneys ROBIN, HARRIS, KING &
FODERA answering the complaint of the plaintiff herein:

ANSWERING THE PARTIES

FIRST: Deny any knowledge or information sufficient to form a belief as to each
and every allegation contained in paragraphs designated "1" of the complaint.

ANSWERING JURISDICTION AND VENUE

SECOND: Deny any knowledge or information sufficient to form a belief as to
each and every allegation contained in paragraphs designated "3" and "5" of the
complaint and refers all questions of law to this Honorable Court

ANSWERING A FIRST, SEPARATE AND DISTINCT
CAUSE OF ACTION

THIRD: Defendant(s) repeat and reiterate all of the admissions and denials
contained in the foregoing answer with reference to those paragraphs repeated and
reiterated in paragraph designated "6" of the complaint.

FOURTH: Denies each and every allegation contained in paragraph designated “7” of the complaint except admits that defendant was and still is the owner and registrant of a certain motor vehicle consisting of a 2001 Ford bearing registration number FVH1035 of the State of Pennsylvania.

FIFTH: Denies each and every allegation contained in paragraphs designated “8”, “11”, “12”, “13”, “13(a)”, “13(b)”, “13(c)”, “13(d)”, “13(e)”, “13(f)”, “13(g)”, “13(h)”, “13(i)”, “13(j)”, “13(k)”, “13(l)”, “13(m)”, “13(n)”, “13(o)”, “13(p)”, “13(q)”, “14”, “15”, “16”, and “17” of the complaint.

SIXTH: Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated “9” and “10” of the complaint and refers all questions of law to this Honorable Court.

ANSWERING A SECOND, SEPARATE AND DISTINCT
CAUSE OF ACTION ON BEHALF OF GISELLE LEBRON

SEVENTH: Defendant repeats and reiterates all of the admissions and denials contained in the foregoing answer with reference to those paragraphs repeated and reiterated in paragraph designated “18” of the complaint.

EIGHTH: Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated “19” of the complaint.

NINTH: Denies each and every allegation contained in paragraphs designated “20” and “21” of the complaint.

ANSWERING A JURY DEMAND

TENTH: Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated “22” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE
COMPLAINT OF THE PLAINTIFF HEREIN, DEFENDANT(S)
ALLEGES UPON INFORMATION AND BELIEF:

ELEVENTH: Defendant alleges that whatever injuries were sustained by said plaintiffs or whatever damages were sustained by said plaintiffs or whatever damages were sustained by said plaintiff at the time and place alleged in the Complaint were the result of the culpable conduct of said plaintiffs and this defendant pleads such culpable conduct in diminution of damages. If a verdict or judgment is awarded to the plaintiffs, then and in that event the damages shall be reduced by the proportion of the culpable conduct attributable to the plaintiffs.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE
COMPLAINT OF THE PLAINTIFF HEREIN, DEFENDANTS
ALLEGES UPON INFORMATION AND BELIEF:

TWELFTH: That the plaintiffs have not sustained a serious injury as defined in Section 5102 of the Insurance Law of the State of New York nor an economic loss greater than the basic economic loss as defined in Section 5102 of that law. That the exclusive remedy of plaintiffs is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE
COMPLAINT OF THE PLAINTIFF HEREIN, DEFENDANTS
ALLEGES UPON INFORMATION AND BELIEF:

THIRTEENTH: The plaintiffs assumed the risk of all dangers attendant with the activity in which plaintiff was jaywalking at the time of the accident and is therefore barred from recovering on the claim asserted. All risks and dangers connected with the situation at the time and place mentioned in the Complaint were open, obvious and apparent and were known to and assumed by the plaintiff.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO THE
COMPLAINT OF THE PLAINTIFF HEREIN, DEFENDANTS
ALLEGES UPON INFORMATION AND BELIEF:

FOURTEENTH: In the event plaintiffs recover a verdict or judgment against this Answering Defendant then said verdict or judgment must be reduced pursuant to C.P.L.R. 4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiffs, in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, Social Security, Workers' Compensation or employee benefit programs.

WHEREFORE, defendant JOSEPH A. PURCELL demands judgment dismissing the complaint of the plaintiff together with the costs and disbursements of the defense of this action and if any damages are recoverable against defendant, the amount of such damages shall be diminished by the amount of the funds which plaintiffs have or shall receive from any collateral sources.

Dated: New York, New York
September 03, 2008

Yours etc.,

BY: _____/S/
Vincent Brescia (VB/6213)
Associated with the Law Office of
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